

Winter 2005

# Concluding Remarks

Joseph L. Hoffmann

*Indiana University Maurer School of Law*, [hoffma@indiana.edu](mailto:hoffma@indiana.edu)

Follow this and additional works at: <http://www.repository.law.indiana.edu/ilj>

 Part of the [Courts Commons](#), [Criminal Law Commons](#), [Judges Commons](#), and the [State and Local Government Law Commons](#)

## Recommended Citation

Hoffmann, Joseph L. (2005) "Concluding Remarks," *Indiana Law Journal*: Vol. 80: Iss. 1, Article 29.

Available at: <http://www.repository.law.indiana.edu/ilj/vol80/iss1/29>

This Symposium is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Law Journal by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact [wattn@indiana.edu](mailto:wattn@indiana.edu).



**JEROME HALL LAW LIBRARY**

INDIANA UNIVERSITY  
Maurer School of Law  
Bloomington

## Concluding Remarks

*Joseph L. Hoffmann*

I would like to thank, one more time, all of the participants in this Conference, and all of the persons and organizations whose support made this Conference possible. It has been a wonderfully interesting and informative couple of days.

I think I can speak for the entire Governor's Council in saying that we have learned a great deal from the presentations, questions, and comments during this Conference. And we are very, very grateful for your suggestions and insights. Let me briefly try to summarize what I think have been some of the more important points made here:

We have been told that our proposed list of aggravating circumstances, or death-eligible crimes, is appropriately narrow, but we have been warned about the dangers of "aggravator creep," and about the need to be vigilant in preventing it.

We have been told that statewide limits on prosecutorial discretion are a good idea, but that we must try to limit any political effects on the review process.

We have been told that adequate funding will be a critical aspect of ensuring high-quality defense representation, and that mitigation specialists also are needed for fair capital sentencing hearings.

We have been told that death qualification of capital juries is a key factor that can affect the accuracy of the factual determination of guilt at trial, and we have received useful and workable suggestions about how to eliminate, or at least minimize, that problem.

We have heard confirmation of our conclusion that human evidence needs to be viewed skeptically, at times, but we have also heard that our proposed jury instructions will need to be drafted carefully if they are to have any impact at all on jurors.

We have been told that forensic science can be (and, of course, already is) a crucially important tool for resolving factual disputes, but that forensic science is not a panacea, and is only as good as the process of collection, handling, preservation, and analysis that goes into producing it.

We have been told that jurors will not find it easy to apply two different burdens of proof, one for guilt and one for sentencing, and that using two different standards might reduce false positives, but at the cost of also producing more false negatives.

We have heard that Independent Scientific Review is a good idea, but that to be truly effective, it may need to involve blind review, in the sense that the ISR review panels should be asked to review scientific evidence both from cases in which the defendant was found guilty and from cases in which the defendant was found not guilty.

We have been told that pretrial screening by trial courts, as recommended in the Report, may be especially helpful in preventing errors at trial.

We have heard some very interesting discussions about the proposed substantive appellate review, and about the possible approaches that might be used by the appellate courts to conduct such review.

And we have heard nothing but praise for the idea of a Death Penalty Review Commission.

Finally, in broad terms, we have been told that our recommendations are likely to produce a death penalty that would be very rarely applied, and whose implementation, whenever it is applied, would be very costly. And we have been cautioned about the risk that our recommendations may lead to a certain kind of disproportionality in the

application of the death penalty, depending, for example, on whether a particular highly aggravated murder case happens to include the required quantity and quality of scientific evidence to support a death sentence. Whether this particular kind of disproportionality should be a matter of significant concern is a question that remains to be answered.

This is only a brief summary, not a comprehensive listing, of what this Conference has produced. If I did not specifically mention something that was said, it certainly doesn't mean that it was not valuable. I can assure you that, over the months to come, we will review these proceedings, in their entirety, to glean whatever we possibly can from the accumulated wisdom and experience of those who have participated.